

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

February 4, 2009

Patrick Henry
SBI No.
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 0609021733 and 0610025087

Dear Mr. Henry:

The Court received your first Motion for Postconviction Relief on January 21, 2009. It is timely because the mandate from the Delaware Supreme Court affirming your appeal was issued on March 25, 2008.

As noted in the history of your case in the Supreme Court decision, you were arrested on September 29, 2006, on felony drug offenses. After spending ten (10) days in jail, you were released on bond; and on October 25, 2006, you were arrested again and charged with additional felony drug offenses. Trial on the September arrest took place on March 14, 15, and 19, 2007. Trial on the October arrest took place on March 27 and 28, 2007. You were found guilty as charged at each trial and following a determination that you were a habitual offender, sentenced to a total of twenty-seven (27) years of Level 5 incarceration.

Additionally, you received a four (4) year sentence for a violation of probation. The Supreme Court affirmed these convictions and your sentence. *Henry v. State*, 945 A.2d 594 (Del.2008) (TABLE).

In Ground One of your Motion, you allege your attorney was ineffective. To establish that your attorney was ineffective, you must provide concrete allegations that your attorney made errors in representing you on an objective basis and that your attorney's mistakes actually caused you prejudice. *Strickland v. Washington*, 466 U.S. 668 (1984). Your allegations must be specific as to the claim of deficient performance by your attorney and the prejudice caused by the deficient performance. Conclusory allegations are insufficient and cause for dismissal of your claim. *Dawson v. State*, 673 A.2d 1186 (Del. 1996).

Your allegations concerning your trial attorney and appellate attorney are conclusory. You simply state that she did not represent you correctly at trial, nor did she argue properly on appeal. This claim is denied.

In Ground Two, you argue that you were not treated fairly because there should have only been one trial for your conduct in September and in October. You complain that the charges should have been consolidated, and therefore you would have only gotten one set of convictions. This claim is procedurally barred under Superior Court Criminal Rule 61(i)(3) in that any matters concerning consolidation could have been raised before the trials and any decision concerning consolidation could have been appealed to the Delaware Supreme Court. It is too late to be arguing this twenty-two (22) months after your convictions without addressing the cause or reason this was not raised earlier. Nor have you addressed any prejudice, which may be difficult to prove based on the above facts.

To the extent you are arguing that had there been one trial you would have only been convicted of a single set of drug charges, you are mistaken. The State charged you with being involved in the business of drug sales on two separate days. The evidence establishes that you formed the intent to commit each offense and an argument that double jeopardy bars two trials is frivolous. This ground is denied.

In Ground Three, you argue that there was a "conflict of interest" because the prosecutor and the police made promises concerning charges being dropped if you cooperated with them. You raised this issue in the Supreme Court and the Court noted the following:

With respect to his first trial, Henry alleges, as he did in a Superior Court motion in limine, that the police failed to follow through on promises of leniency in return for his cooperation. In view of the Superior Court's decision to suppress the incriminating statements that Henry made to the police on the day he asserted that he was promised favorable treatment, Henry has not demonstrated that he was prejudiced.

This claim is procedurally barred as it has been raised and previously adjudicated. Superior Court Crim. R. 61(i)(4). This ground is denied.

In summary, your Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

baj
cc: Prothonotary
Department of Justice